State of Florida

Public Service Commission

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RECORDS AND REPORTING

DATE: JUNE 18, 1998

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYÓ)

FROM: DIVISION OF WATER AND WASTEWATER (CLAPP)
DIVISION OF LEGAL SERVICES (BRUBAKER)

RE: DOCKET NO. 970474-SU - REQUEST FOR APPROVAL OF TRANSFER OF WASTEWATER FACILITIES OF PIONEER WOODLAWN UTILITIES, INC. TO CITY OF PANAMA CITY BEACH AND CANCELLATION OF CERTIFICATE NO. 128-S IN BAY COUNTY.
COUNTY: BAY

AGENDA: 06/30/98 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\WAW\WP\970474-SU.RCM

CASE BACKGROUND

Pioneer Woodlawn Utilities, Inc., (Pioneer Woodlawn or utility) is a Class C utility serving 193 residential and 20 general service wastewater customers in or near the Woodlawn subdivision in Bay County. The utility's 1991 annual report on file with the Commission lists annual revenues of $52,364 and net operating loss of $20,311.

The utility was authorized by the Department of Environmental Protection (DEP) to dispose of its effluent by discharging it into West Bay. However, DEP changed the class status of West Bay, which prohibited any further discharge into the Bay. The utility was afforded the opportunity to continue discharging its effluent into the bay, provided certain improvements to its wastewater treatment system were made. In June 1988, the utility entered into a Consent Order with DEP, whereby the utility agreed in part to install a

dechlorination system and to apply for a renewal of its operating permit.

As of early 1992, the utility had failed to comply with the Consent Order. Therefore, DEP filed civil action against the utility. As a result of that suit, in April 1992, an Order issued by the Circuit Court for the Fourteenth Judicial Circuit gave Pioneer Woodlawn 120 days to cease operation of the wastewater treatment plant. Because the utility had been unable to connect the sewage flows from its collection system to a regional wastewater treatment facility, the utility was effectively ordered to interconnect with the City of Panama City Beach (City). By letter dated May 8, 1992, the utility advised this Commission that discussions had begun with the City Manager concerning transferring its facilities and customers to the City for wastewater service. By letter dated September 8, 1992, this Commission sent the utility an application for transfer to governmental authority. The letter also put the utility on notice of its obligation to remit regulatory assessment fees for 1992, as well as its obligation to keep the Commission informed of the transfer efforts. Staff was assured by both the utility and the City that written confirmation regarding the interconnection and the City's acquisition of the utility would be timely submitted.

On January 5, 1993, Staff received verbal confirmation from the City Manager that the City had taken over the utility's collection system and lift stations. The physical interconnection was made on November 6, 1992, and the City had been pumping the utility's effluent to the City's treatment facility as of that date. However, staff had received no written confirmation from either the utility or the City regarding this matter until April 14, 1997, with the receipt of the application requesting approval of the transfer of Pioneer Woodlawn Utilities, Inc., to the City of Panama City Beach.

DISCUSSION OF ISSUES

ISSUE 1: Should Pioneer Woodlawn be ordered to show cause, in writing within 20 days, why it should not be fined for violation of Section 367.071, Florida Statutes.

RECOMMENDATION: No. Show cause proceedings should not be initiated. (BRUBAKER)

STAFF ANALYSIS: As discussed previously in the case background, Pioneer Woodlawn's facilities were interconnected with the City on November 6, 1992. However, the application for transfer was not filed with the Commission until April 14, 1997. Section 367.071 (1), Florida Statutes, requires that

> No utility shall sell, assign, or transfer its certificate of authorization, facilities, or any portion thereof ..., without determination and approval of the commission that the proposed sale, assignment, or transfer is in the public interest and that the buyer, assignee, or transferee will fulfill the commitments, obligations, and representations of the utility.

Section 367.161 (1), Florida Statutes, authorizes the Commission to assess a penalty of not more than $5,000 for each offense, if a utility is found to have knowingly refused to comply with, or have willfully violated, any provision of Chapter 367, Florida Statutes.

Pioneer Woodlawn appears to have violated Section 367.071(1), Florida Statutes, by failing to obtain the approval of the Commission before transferring its facilities to the City of Panama City Beach. While Staff has no reason to believe that the utility intended to violate this statute, its act was "willful" in the sense intended by Section 367.161, Florida Statutes. In Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL titled In Re: Investigation Into The Proper Application of Rule 25-14.003, F.A.C., Relating To Tax Savings Refund for 1988 and 1989 For GTE Florida, Inc., the Commission, having found that the company had not intended to violate the rule, nevertheless found it appropriate to order it to show cause why it should not be fined, stating that, "in our view, 'willful' implies an intent to do an act, and this is distinct from an intent to violate a statute or rule." Id. at 6. Utilities are charged with the knowledge of the Commission's rules and statutes. Additionally, "[i]t is a common maxim, familiar to all minds that 'ignorance of the law' will not excuse any person, either civilly or criminally." Barlow v. United States, 32 U.S. 404, 411 (1833).

Pioneer Woodlawn's failure to obtain the approval of the Commission prior to completing a transfer of a utility's facilities is an apparent violation of Section 367.071(1), Florida Statutes. There are, however, circumstances which appear to mitigate the utility's apparent violation. As discussed previously, Pioneer

Woodlawn was operating without a DEP operational permit, was subject to a Consent Order, and was discharging wastewater in violation of environmental regulations. Because the utility had been unable to connect the sewage flows from its collection system to a regional wastewater treatment facility, the only viable option which would allow the utility to timely comply with the Fourteenth Judicial Circuit Court's Order would be interconnection with the City of Panama City Beach. Because time was of the essence with regard to the interconnection, the City took over the utility's wastewater service in 1992, prior to obtaining Commission approval. In addition, the City, which filed the transfer application on behalf of the utility, had considerable difficulty obtaining the records and information necessary to prepare the transfer application. Once all such information had been obtained to the best of the City's ability, the transfer application was prepared and filed with the Commission.

Under these circumstances, staff does not believe that the utility's apparent violation of Section 367.071(1), Florida Statutes, rises to the level of warranting that a show cause order be issued. Therefore, staff recommends that the Commission not order Pioneer Woodlawn to show cause why it should not be fined for failing to obtain the Commission's approval of the transfer of the utility's facilities prior to the date of the transfer.

ISSUE 2: Should the Commission acknowledge the transfer of the utility to the City of Panama City Beach and cancel Certificate No. 128-S?

RECOMMENDATION: Yes, the Commission should acknowledge the transfer of the utility to the City of Panama City Beach as of November 6, 1992, and cancel Wastewater Certificate No. 128-S. (CLAPP)

STAFF ANALYSIS: Pioneer Woodlawn provided wastewater service to 193 residential and 20 general customers in and near the Woodlawn subdivision in Panama City Beach under Certificate No. 128-S. The utility was authorized to dispose of its effluent by discharging it into West Bay. However, in the 1980's, the Department of Environmental Protection changed the class status of West Bay, which prohibited any further discharge into the Bay. The utility was afforded the opportunity to continue discharging its effluent into the bay pursuant to a Consent Order with DEP, signed in June 1988, in which the utility agreed to install a dechlorination system and to apply for a renewal of its operating permit.

The utility failed to comply with the Consent Order, and DEP filed civil action against the utility. In April 1992, the Fourteenth Judicial Circuit issued an order in Case No. 90-1192 that required Pioneer Woodlawn to cease operation of the wastewater treatment plant and to cease all wastewater discharge into West Bay no later than 120 days from the issuance of the order.

According to a July 21, 1992, letter from Jay Myers, President of Pioneer Woodlawn, he and the City of Panama City Beach were in negotiations for the transfer of service prior to the April 1992 order. At that time, the utility was current with its Annual Reports and Regulatory Assessment Fees through 1991. Letters from the Commission on September 8, 1992, to Pioneer Woodlawn and to the City of Panama City Beach included instructions and forms for the transfer of the utility to a governmental entity. Neither party submitted a transfer application nor advised the Public Service Commission of the actual transfer until April 14, 1997.

Rule 25-30.037(4)(g), Florida Administrative Code, requires a utility to submit a statement regarding disposition of customer deposits when a utility is transferred. Supplemental application information indicated that Pioneer Woodlawn returned all of the customer deposits and donated the system to the City of Panama City Beach on November 6, 1992.

Rule 25-30.037(4)(e) requires that the governmental authority obtain the most recent available income and expense statement, balance sheet, statement of rate base for regulatory purposes, and contributions-in-aid-of-construction. This information was provided in a letter to the City Manager by the Commission on September 8, 1992.

Pursuant to Rule 25-30.037(4)(h), Florida Administrative Code, the utility paid all regulatory assessment fees through 1992. There are no outstanding fines or refunds due.

It does appear that the City and the utility worked together to quickly address the requirements of DEP and needs of the customers. Pursuant to Section 367.071(4)(a), Florida Statutes, the transfer of facilities, in whole or part, to a governmental authority shall be approved as a matter of right. Therefore, staff recommends that the Commission acknowledge the transfer of Pioneer Woodlawn to the City of Panama City Beach. The utility has paid regulatory assessment fees for 1992. Because the City has been providing service since 1992, pursuant to Section 367.022(2), Florida Statutes (governmental authority exemption), Certificate No. 128-S should be cancelled and no additional regulatory assessment fees or annual reports are required.

ISSUE 3: Should this docket be closed?

RECOMMENDATION: Yes, no further action is required and this docket should be closed. (BRUBAKER)

STAFF ANALYSIS: No further action is required in this docket and this docket should be closed.